LEE WAI KIN

v.

YULEK SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[ORIGINATING SUMMONS NO. F 1013 OF 1985]
12 FEBRUARY 1986

LAND LAW: *Section 8(1) of Strata Titles Act 1985 - Who should apply for strata title - Prescribed fee under section 10 - When can collect payment from registered proprietor- Terms of the agreement - Construction of.*

In the early 1970's the defendant (a developer) embarked on a large development scheme on several pieces of land which it owned. The scheme involved construction of 6 blocks of 4 storey buildings consisting of 560 units of flats which it sold to the public. The plaintiff bought one of the flats in 1973 and has since paid the purchase price and is in occupation of the flat. The defendant had over the years been demanding various sums of money from the plaintiff, including expenses to be incurred for issuance of strata title as well as increased maintenance fee. Dissatisfied with the indiscriminate manner in which these money were being demanded, the plaintiff referred several questions to the Court.

Held:

[1] Under s. 8(1) of the Strata Titles Act 1985, it is incumbent upon the defendant, as proprietor of the land on which the flat stands, to apply for the strata title on behalf of the plaintiff.

[2] On the interpretation of "final transfer" of Clause 28 of the sale and purchase agreement, the words refer to the issuance of the strata title as that is the final act that establishes the plaintiff as the registered proprietor of his flat. Since the issue is solely for the benefit of the plaintiff, it is only right and just that he should meet the costs of applying for such title. The defendant is therefore entitled to collect payment from the plaintiff for the expenses to be incurred in the application for the strata title.

[3] The amount to be collected from the plaintiff must be the prescribed fee that is to be paid under s. 10 of the Strata Titles Act 1985. Since the developer had delayed in applying for the strata title and since this had affected the amount of expenses to be incurred, it is only right and proper that the developer should be prepared to advance its own funds for the costs of the application and then seek a reimbursement from the plaintiff of such costs which amount must be the prescribed fee under s. 10 of the Act. The defendant is not entitled to collect payment of the prescribed fee from the plaintiff in advance.

[4] Since the parties had agreed that RM50 shall be charged as the administrative fee for each assignment, the defendant cannot by reason of inflation, raise this consent fee to RM500.

[5] The defendant cannot arbitrarily raise the maintenance fee to RM15 per month as this was contrary to what had been agreed. Neither can the defendant demand a deposit equivalent to 3 months' maintenance fee. As interest is not chargeable under Clause 20(1) of the agreement, the defendant has no power to charge such interest.

Legislation referred to:

National Land Code 1965, ss. 151A(1), 153(1)
Strata Titles Act 1985, ss. 8(1), 10

JUDGMENT

Siti Norma Yaakob J:

The defendant in this originating summons is a developer who in the early 1970's had embarked in a large development scheme on several pieces of land which it owned. The scheme involved construction of 6 blocks of 4 storey buildings consisting of 560 units of flats which it sold to the public. The plaintiff bought one of them pursuant to a sale and purchase agreement dated 4 October 1973 and has since paid the purchase price of RM13,000 and is in occupation of the flat.

As the property has not been issued with a strata title, the defendant had, over the years, been demanding various sums of money from the plaintiff for expenses to be incurred for applying for such title. In addition, the defendant had demanded for an increased sum by way of consent and vetting fee from the other purchasers for the purpose of assigning their properties. Dissatisfied with the indiscriminate manner in which the various sums of money had been demanded, the plaintiff referred several questions which are clearly set out as (a) - (g) in this originating summons for my determination.

Questions (a) and (b)

The defendant concedes to the issues raised in view of the repealed s. 151A(1) of the National Land Code 1965 and the law now in force namely s. 8(1) of the Strata Titles Act 1985 which makes it compulsory for the proprietor of any alienated land on which there is a building of 2 or more storeys to apply for a sub-division of the building into parcels each to be held under a separate strata title. Thus it is incumbent upon the defendant to apply for the strata title on behalf of the plaintiff.

Question (c)

This relates as to who should bear the burden of meeting the costs of applying for the strata title. The defendant maintains that the plaintiff should do so by virtue of Clause 28 of the sale and purchase agreement entered between them. The plaintiff considers it to be otherwise as the meaning of Clause 28 is ambiguous and that the agreement should be construed against the maker, i.e. the defendant.

The first sentence of Clause 28 states that "the cost of and incidental to this Agreement, any subsequent assignment and the final transfer to him shall be borne by the Purchaser." Reading the agreement in its entirety, I do not consider that the words "final transfer" in Clause 28 are ambiguous in meaning. They can only refer to the issuance of the strata title as that is the final act that establishes the plaintiff as the registered proprietor of his flat. As its issue is solely for the benefit of the plaintiff, it is only right and just that he should meet the costs of applying for such title. So for question (c), I hold that the defendant is entitled to collect payment from the plaintiff for the expenses to be incurred in the application for the strata title.

Question (d)

The amount to be collected from the plaintiff must be the prescribed fee that is to be paid under s. 10 of the Strata Titles Act 1985 and in making the ruling that the plaintiff is to meet such payment, the defendant should not take that as an opportunity to hike up the prescribed fee under the guise of administrative costs so as to make a profit in making such application. This is so as the defendant had delayed considerably in making the application and had

insisted as a condition precedent for the application that the plaintiff deposit a specified sum which had been increased over the years as estimated expenses involved in the application. On 3 June 1980, the defendant had demanded that the plaintiff deposit RM500 as being the estimated costs of the application. This amount was raised to RM578.55 in June 1983 and 2 months later, in August 1983, the amount was again raised to RM700.

No reason is given why the expenses cannot be determined or why the defendant had delayed in applying for strata title. Before the coming into effect of the Strata Titles Act 1985, the relevant provision of the law applicable was s. 153(1) of the National Land Code 1965 which prescribed the procedure for such application on payment of the prescribed fee. The delay must, to some extent, affect the amount of expenses to be incurred and as the defendant has been guilty of it, it is only right and proper that it should be prepared to advance its own funds for the costs of the application and then seek a reimbursement from the plaintiff of such costs which amount must be the prescribed fee under s. 10 of the Strata Titles Act 1985.

Question (e)

Based on what I have stated earlier, I consider that the defendant is not entitled to collect payment of the prescribed fee from the plaintiff in advance.

Question (f)

I now come to consider whether the defendant is entitled to charge RM500 as consent fee for any intended assignment. Clause 11 of the agreement allows the defendant to charge RM50 as the administrative fee for every assignment it had consent to. The RM50 administrative fee is the costs of maintaining a complete record of such assignment or sub-sale by each purchaser of the flats. As the parties had agreed that RM50 shall be charged for each assignment, the defendant cannot, be reason of inflation, raise the consent fee to RM500.

Question (g)

Lastly, I come to consider whether the defendant is entitled to

(1) increase the maintenance fee generally from RM2.50 to RM15 per month,

(2) collect a sum equivalent to 3 months' maintenance fee in advance and,

(3) charge interest on overdue payment

The common services which the defendant agreed to maintain are

(1) the roads and drains.

(2) the lights on the main road.

(3) the removal and disposal of refuse

(4) weeding along the edges of the roads and drains.

For providing the above services, the plaintiff had agreed in Clause 11 of the agreement to pay the defendant RM4 a month as maintenance fee so long as such services have not been taken over by any local authorities. As such services have since been taken over by Dewan Bandaraya, clearly Clause 11 is inapplicable.

Apart from Clause 11, Clause 20(c) of the agreement allows the defendant to charge each purchaser not less than RM2.50 per month for keeping all passageways, stairs and drains clean, for lighting the corridors and staircases, for white washing the external walls, maintenance of the roof and painting the railings from time to time, provided that at least one month's notice shall be given to the purchaser if at any particular month the maintenance fee exceeds RM2.50. By generally raising the maintenance fee from RM2.50 to RM15 per month, the defendant has clearly acted well beyond what had been agreed upon in Clause 20(c). The only way a maintenance of a particular month has been increased due to some extra work, like, painting, had to be done to the premises in which case; the defendant should give 1 month's notice of his intention to raise the maintenance fee and the increase is only applicable to the particular month when the extra maintenance had to be done. Thus, to arbitrarily raise the maintenance fee to RM15 per month is contrary to what had been agreed and clearly the defendant has no power to do so. For that matter too, neither can it demand a deposit equivalent to 3 months' maintenance fee. As interest is not chargeable under Clause 20(c), here again the defendant has no power to charge such interest. So for question (g), I answer all the issues raised in the negative.

As the plaintiff is not asking for costs, I make no order as to costs in this originating summons.

As the same questions and issues have been raised in Originating Summons F. 1319/85, I accordingly answer them in the same manner I have done in this originating summons, and likewise, I also make no order as to costs in Originating Summons F 1319/85.

Also found at [1986] 1 CLJ 505